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August 30, 1985

Dear Mr.

Whether the Transfer of Real Property to a Charitable Remainder Trust Constitutes a "Change in Ownership"

This is in response to your letter of August 7, 1985 addressed to Richard H. Ochsner asking whether the transfer of real property to a charitable remainder trust constitutes a change in ownership. You represent several charitable organizations that actively solicit and receive charitable gifts of remainder interests in California real property. These "deferred gifts" are typically in the form of "charitable remainder trusts" described in Section 664 of the Internal Revenue Code and Section 17731 of the Revenue and Taxation Code.

You have described three types of charitable remainder trusts-- the "charitable remainder annuity trust," the "charitable remainder unitrust," and the "charitable remainder net income unitrust." In each type, the trustor transfers property to an irrevocable trust, the terms of which provide for (i) an income interest (an "annuity" or unitrust" interest) retained by the trustor or transferred to another non-charitable beneficiary, and (ii) a charitable remainder in the property at the termination of that income interest. Any accumulated but undistributed trust income is added to the trust principal to be distributed to the charitable remainderman.

Section 62(d) of the Revenue and Taxation Code provides, in pertinent part, that a change in ownership shall not include:

Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust.

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August 30, 1985

Under the terms of this section, a transfer of real property by a trustor to an irrevocable charitable remainder trust would not be a change in ownership if the trustor or the trustor's spouse is the present income beneficiary of the trust. Although trust income in excess of the annuity or unitrust payments is undistributed but accumulates to the eventual benefit of the charitable remainderman, the remainderman is not a present beneficiary of the trust because payments of its interest are deferred until the trust terminates.

If, however, income is distributed by the trust to a present beneficiary other than the trustor or the trustor's spouse, the requirements of Section 62(d) would not be met and transfers of property to the trust would constitute a change in ownership.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the transactions you describe will be assessed in a manner consistent with the conclusion stated above.

Sincerely,

Barbara G. Elbrecht

Barbara G. Elbrecht
Tax Counsel

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